

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANA I. MUNIZ and ANGEL MUNIZ,  
individually and on behalf of a class

Plaintiffs,

-against-

BANK OF AMERICA, N.A.

Defendant.  
-----X

CLASS ACTION  
COMPLAINT

'11 CIV 8296

JUDGE KARAS

Plaintiffs, by and through their undersigned attorney, allege upon knowledge as to themselves and their own acts, and as to all other matters upon information and belief, bring this complaint against the above-named defendant and in support thereof alleges the following.

**PRELIMINARY STATEMENT**

1. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated for damages and declaratory and injunctive relief arising from Defendant's violation of § 1692 of Title 15 of the United States Code, the Fair Debt Collection Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive deceptive and unfair practices.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violation of 15 U.S.C. § 1692.

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

### **PARTIES**

4. Plaintiff Ana Muniz is a resident of the State of New York, Bronx County. On or about July 2011, plaintiff Ana Muniz received a debt collection notice from the defendant at plaintiff's home address. **Exhibit A**.

5. Plaintiff Angel Muniz is a resident of the State of New York, Bronx County. On or about July 2011, plaintiff Angel Muniz received a debt collection notice from the defendant at plaintiff's home address. **Exhibit A**.

6. Defendant Bank of America, N.A. is considered a debt collector as defined, and as stipulated in its July 2011 letter, attached as **Exhibit A**, which states, "[U]nder the federal Fair Debt Collection Practices Act and certain state laws, Bank of America, N.A. is considered a debt collector." Bank of America, N.A. is located at 101 S. Tryon Street, Charlotte, North Carolina 28280—0002.

### **CLASS ACTION ALLEGATIONS**

7. Plaintiffs bring this action as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), on behalf of themselves and all consumers and their successors in interest (the "Class"), who have received debt collection letters and/or notices from the defendant which are in violation of the FDCPA, as described in paragraphs numbered 16 through 19 of this complaint, as of the date of plaintiff's complaint. Excluded from the Class is the defendant herein and any person, firm, trust, corporation or other entity related to or affiliated with the defendant, including, without limitation, persons who are officers, directors, employees, associates or partners of Bank of America, N.A.

8. This action is properly maintained as a class action. This Class satisfies all the requirements of Rule 23 for maintaining a class action.

9. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, hundreds of persons have received debt collection notices from the defendant which violate various specific provisions of the FDCPA.

10. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

- a. Whether the defendant violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692g(a)(2).
- b. Whether plaintiffs and the Class have been injured by the defendant's conduct;
- c. Whether plaintiffs and the class have sustained damages and are entitled to restitution as a result of the defendant's wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and
- d. Whether plaintiffs and the Class are entitled to declaratory and/or injunctive relief.

11. Plaintiffs' claims are typical of the claims of the Class, and the plaintiffs have no interests adverse or antagonistic to the interests of other members of the Class.

12. Plaintiffs will fairly and adequately protect the interests of the Class and have retained experienced counsel, competent in the prosecution of class action litigation.

13. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiffs anticipate that no unusual difficulties are likely to be encountered in the management of this class action.

14. A class action will permit large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a class action Class members will continue to suffer losses of statutorily protected rights as well as monetary damages. If defendant's conduct will proceed without remedy it will continue to reap and retain the proceeds of its ill-gotten gains.

15. Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

### **STATEMENT OF FACTS**

16. On or about July 2011, defendant sent a collection letter to Ana I. Muniz and Angel Muniz demanding payment of a debt.

A copy of said collection letter is annexed hereto as **Exhibit A**.

17. The collection letter stated that the creditor to whom this debt is owed is: BANA(TX LP)GOV'T 1STLIENS CIG.

18. Defendant in many instances violated the requirements of the FDCPA, in the following and other respects by falsely claiming that "BANA(TX LP)GOV'T 1STLIENS CIG" is the name of the creditor in violation of 15 U.S.C. § 1692g(a)(2).

### **CLASS ALLEGATIONS**

19. This action is brought on behalf of a class. The class includes all consumers who were sent a written notice falsely claiming that the name of the creditor to whom the debt is owed is "BANA(TX LP)GOV'T 1STLIENS CIG."

20. The class period begins one year prior to the filing of this action.

21. The class is so numerous that joinder of all members is impractical.

Upon information and belief, there are several hundred class members.

Plaintiffs are complaining of standard form letters.

22. There are questions of law common to the class, which questions predominate over any questions affecting only individual class members.

The principle questions presented are whether defendant violated 15 U.S.C.

§ 1692g(a)(2).

23. Plaintiffs will fairly and adequately protect the interests of the class.

Plaintiffs have retained counsel experienced in handling class claims and claims involving unlawful collection practices. Neither plaintiffs nor counsel have any interests which might cause him not to vigorously pursue this claim.

24. Plaintiffs' claims are typical of the class, which all arise from the same operative facts and are based on the same legal theories.

25. A class action is a superior method for the fair and efficient adjudication of the controversy.

**WHEREFORE**, plaintiffs respectfully request that the Court enter judgment as follows:

(a) Declaring that this action is properly maintainable as a class action and certifying plaintiffs as Class representative.

(b) Issue a preliminary and permanent injunction restraining defendant, its employees, agents and successors from, *inter alia*, engaging in conduct and practices that are in violation of the FDCPA;

(c) Issue a declaratory Order requiring defendant to make corrective disclosures;

(d) Awarding plaintiffs and the class statutory damages;

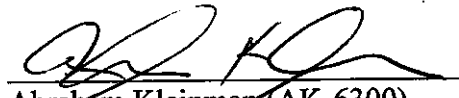
(e) Awarding plaintiffs costs of this action, including reasonable attorneys' fees and expenses; and

(f) Awarding plaintiffs and the class such other and further relief as the Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38 of the FRCP, plaintiffs hereby demand a trial by jury.

Dated: November 16, 2011  
Uniondale, New York



Abraham Kleinman (AK-6300)  
KLEINMAN LLC  
626 RXR Plaza  
Uniondale, New York 11556-0626  
Telephone (516) 522-2621  
Facsimile (888) 522-1692

# **EXHIBIT “A”**



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Doc ID: BANACOM3A

**Bank of America**



Home Loans

P. O. Box 941633  
Simi Valley, CA 93094-1633

0086384 01 AT 0.362 \*AUTO 6 0 4437 10457-43163 -C01-P85470-1

ANA I & ANGEL MUNIZ  
1683 WASHINGTON AVE  
BRONX NY 10457-4316



Account No.: 174463175



#### IMPORTANT MESSAGE ABOUT YOUR LOAN

Effective July 1, 2011, the servicing of home loans by our subsidiary—BAC Home Loans Servicing, LP, transfers to its parent company—Bank of America, N.A. Based upon our records as of June 27, 2011, the home loan account noted above is affected by this servicing transfer. The information contained in this communication does not change or affect any other communications you may have received or will receive regarding this servicing transfer.

#### IMPORTANT ADDITIONAL INFORMATION

Under the federal Fair Debt Collections Practices Act and certain state laws, Bank of America, N.A. is considered a debt collector. As a result, we are sending you the enclosed Fair Debt Collection Practices Act Notice containing important information about your loan and your rights under applicable federal and state law.

If an attorney represents you in connection with your Bank of America home loan, please provide your attorney a copy of this letter and the enclosed legal notice.

#### THANK YOU

We appreciate the opportunity to serve your home loan needs. If you have any questions or need assistance regarding this servicing transfer, please call us at 1.877.488.7812 between 8 a.m. and 9 p.m. Eastern, Monday through Friday.

Please Note: This letter is being sent to the address and borrower(s) listed above. If there are other borrowers on this account who receive mail at a different address than above, please share this information with them.

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector attempting to collect a debt, and any information obtained will be used for that purpose. Notwithstanding the foregoing, if you are currently in a bankruptcy proceeding or have received a discharge of the debt referenced above, this notice is for informational purposes only and is not an attempt to collect a debt. If you are represented by an attorney, please provide this notice to your attorney.

Fair Debt Collections Practices Act and State Law Notice

The servicing of your home loan was transferred to Bank of America, N.A., effective July 1, 2011. Bank of America, N.A. is required by law to advise you of the following:

(1.) Under the federal Fair Debt Collections Practices Act and certain state laws, Bank of America, N.A. is considered a debt collector. Bank of America, N.A. must provide certain information to you in order to make sure you are informed when a communication is related to a debt. The purpose of this letter is therefore to provide you with information required by law, including the amount of the debt.

(2.) Debt Validation Notice:

- a) The amount of the debt: As of June 27, 2011, you owe \$496,678.90. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Therefore, if you pay the amount shown above, an adjustment may be necessary after we receive your payment, in which event we will inform you or your agent before accepting the payment for collection. For further information, write to the address provided below or call 1.877.488.7812 between 8 a.m. and 9 p.m. Eastern, Monday through Friday.
- b) The name of the creditor to whom the debt is owed: BANA(TX LP)GOVT 1STLIENS CIG  
*Please note that unless Bank of America, N.A. is listed in 2(b) as the creditor of your loan, Bank of America, N.A. does not own your loan and only services your loan on behalf of your creditor, subject to the requirements and guidelines of your creditor.*
- c) Unless you, within thirty (30) days after receipt of this letter, dispute the validity of the debt or any portion of the debt, Bank of America, N.A. will assume the debt to be valid.
- d) If you notify Bank of America, N.A. in writing, at the address provided below within the thirty (30) day period, that the debt, or any portion thereof, is disputed, Bank of America, N.A. will obtain verification of the debt and mail it to you.
- e) Upon your written request within the thirty (30) day period, Bank of America, N.A. will provide you with the name and address of the original creditor if it is different from the current creditor.

Bank of America, N.A.  
Customer Service, CA6-919-01-41  
Attention: DVN  
P.O. Box 1140  
Simi Valley, CA 93062-1140

If you have any questions regarding this notification, please call Bank of America, N.A. Customer Service at 1.877.488.7812 between 8 a.m. and 9 p.m. Eastern, Monday through Friday.

Bank of America, N.A. is required by law to inform you that this communication is from a debt collector attempting to collect a debt, and any information obtained will be used for that purpose. Notwithstanding the foregoing, if you are currently in a bankruptcy proceeding or have received a discharge of the home loan debt referenced above, this statement is being furnished for informational purposes only. It should not be construed as an attempt to collect against you personally, Bank of America, N.A. will take no steps to collect from you personally or against the property securing this loan while the bankruptcy's automatic stay remains in effect. In the future, you may receive a discharge in bankruptcy. Under those circumstances, by operation of law, Bank of America, N.A. will retain the ability to enforce its rights against the property securing this loan should there be a default under the terms of your loan documents. If you are represented by an attorney, please provide this notice to your attorney.

SEE REVERSE SIDE

Jul. 6. 2011 4:50PM

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Notice to Colorado Residents: A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt. FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE [WWW.AGO.STATE.CO.US/CADC/CADMAIN.CFM](http://WWW.AGO.STATE.CO.US/CADC/CADMAIN.CFM)

Notice to California Residents: The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or [www.ftc.gov](http://www.ftc.gov).